

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2582 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?No

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GULAM SABIR GULAM MOHMAD CHAUHAN

Versus

CITY SURVEY OFFICER  
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Appearance:

MR MUKESH R SHAH for Petitioner  
MRS VK PARIKH ASSTT. GOVERNMENT PLEADER for  
Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 23/04/97

ORAL JUDGEMENT

Heard Mr.Shah for the Petitioner and Mrs.Parikh,  
learned Assistant Government Pleader, for the  
Respondents.

2. The petitioner has challenged the order dated 14.3.1997, Annexure-O, passed by the Collector rejecting the request for regularisation of land upon which encroachment is made by the petitioner. It is the case of the petitioner that similarly situated 42 other persons have already been accommodated and land has been allotted to them in accordance with law. He is also ready to abide by the terms and conditions. However, he is meted out with discriminatory treatment by the respondents. It is not in dispute that the petitioner is having his cabin on the Government land since 1981. Time and again, appropriate proceedings were initiated under the Land Revenue Code for causing encroachment and was also penalised in accordance with law. It is in this background that with the admitted possession of the Government land the petitioner has applied for regularisation.

3. It is not in dispute that he is one of the 140 applicants who applied to the Government for regularisation of their encroachment. It also transpires from the record that without making any discrimination and keeping in mind availability of land the request of applicants in the order of seniority or priority of the list has been accepted and their possession is regularised in accordance with law. Vide order Annexure-D dated 5.11.1992, possession of 42 persons is regularised in the same vicinity where the petitioner is also having his cabin. On facts, respondent No.1, City Survey Department, has also recommended the petitioner's case for regularisation as is evident from Annexure-G letter dated 22.11.1994. On the recommendation of the City Survey Department, respondent No.1, Degham Nagar Palika also favoured the petitioner by passing appropriate resolution for regularisation. On receipt of the said resolution, respondent No.2 also agreed to regularise on the petitioner executing an undertaking/bonds to the effect that, in the event in future the land in question is required for expansion of road he would hand over possession without any objection and without claiming any compensation. Accordingly, the petitioner also executed said document on 9.7.1996, Annexure-M. Respondent No.1 forwarded the said document to the Collector vide Annexure-N dated 11.7.1996. Thus, in the background of this development, it clearly transpires that the authority had no objection for regularisation of encroachment in accordance with the guidelines laid down by the Government. Despite this fact, the encroachment has not been regularised on the ground that the State of Gujarat has not been agreeable

to this proposal. The impugned order refusing to regularise the encroachment is produced at Annexure-0 dated 14.3.1997. On the face of it, no reasons are given for said rejection. At the same time the respondents have also not been able to distinguish the case from the case of other 42 similarly situated persons whose encroachment has been regularised.

4. As observed above, in the case of the petitioner, Degham Nagar Palika as well as the City Survey Department, Degham has no objection for regularisation in accordance with prevailing rules and regulations. When the authorities do not have any objection to regularise, I find no reason for the State of Gujarat and the Collector to refuse the request of the petitioner for regularisation. The act of respondent No.2 rejecting the petitioner's request is apparently arbitrary, discriminatory and in violation of principles of natural justice and is not sustainable in the eyes of law.

5. In the result, the petition is allowed. The impugned order at Annexure-0 dated 14.3.1997 is hereby quashed and set aside with direction that the petitioner's request for regularisation of encroachment be accepted in accordance with law on payment of amount of premium to be determined in light of the guidelines laid down by the Government. The respondents are directed to initiate appropriate proceedings for determining the amount of premium within two weeks from the date of receipt of writ from this court and shall regularise the encroachment within one month from the date of payment of the said amount by the petitioner. Rule is made absolute accordingly.

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